

STATE OF MICHIGAN
COURT OF APPEALS

MATTHEWS HARGREAVES CHEVROLET,

Plaintiff-Appellant,

UNPUBLISHED
December 28, 2010

v

CHARLES R. BASHAWATY and CABARON
MOTORS,

No. 294874
Wayne Circuit Court
LC No. 07-709374-NZ

Defendants-Appellees.

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Plaintiff, Matthews Hargreaves Chevrolet, appeals by right the trial court's order denying it an award of damages. We affirm.¹

I. BASIC FACTS

This dispute involves a business agreement between two car dealerships. Plaintiff sold used cars at wholesale to defendant, Carbon Motors, and it would auction off the vehicles. After auctioning off the vehicles, defendant's representative, Charles Bashawaty, would send plaintiff a check. Apparently, defendant was selling the vehicles for less than it paid plaintiff for them. According to Bashawaty, he expected plaintiff to compensate defendant for this loss based on the oral representations of plaintiff's used car manager, George Landry. Plaintiff's general manager was unaware of this alleged agreement.

Sometime in December or January of 2006, defendant sold four vehicles from plaintiff's inventory that it had received from Landry.² Defendant kept the proceeds from these sales to

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

² Landry's employment with plaintiff ended on December 27, 2006. and he transferred the vehicles to defendant shortly before his employment ended.

make up for the losses it had previously incurred by auctioning plaintiff's vehicles. When defendant refused to turn over the sale proceeds, plaintiff filed a complaint alleging that defendants had unlawfully converted its property.

On January 7, 2009, the trial court granted judgment for plaintiff. The only remaining issue was damages. The trial court held an evidentiary hearing in October 2009. During the hearing, defendant introduced into evidence a letter written by plaintiff's counsel, which was sent to defendants' counsel after discovery had concluded. The letter stated in pertinent part:

[My] client has a an employee theft policy which would likely cover the amount of loss reflected in this lawsuit if it could be shown to their satisfaction that your other client, former defendant George Landry participated in the theft. We would be willing to enter into a consent judgment with Bashawaty and Cabaron and then set it aside and dismiss the case if his cooperation would lead to my client's loss being paid by the insurance company.

Based on this letter, the trial court ruled that plaintiff was not entitled to damages because it had "acted in bad faith with unclean hands."

II. ANALYSIS

Plaintiff argues that the trial court clearly erred by determining that it acted with "unclean hands." We disagree. "An award of damages following an evidentiary hearing is reviewed on appeal pursuant to the clearly erroneous standard." *Woodman v Miesel Sysco Food Serv*, 254 Mich App 159, 190; 657 NW2d 122 (2002). "[T]he clean hands doctrine . . . is applicable to both equitable and legal damages claims." *Moldonado v Ford Motor Co*, 476 Mich 372, 389; 719 NW2d 809 (2006) (quotation marks and citations omitted). The doctrine stands for the proposition that one who seeks relief must do so with clean hands; in other words, "one tainted with inequity or bad faith relative to the matter in which he or she seeks relief, regardless of the improper behavior of the defendant[, is not entitled to the relief he seeks]." *Richards v Tibaldi*, 272 Mich App 522, 537; 726 NW2d 770 (2006).

Here, the trial court's finding is supported by plaintiff's request that defendants help plaintiff recover a claim under its "employee theft policy." Implicit in this suggestion was a request that Bashawaty recant his prior deposition testimony and commit perjury by testifying that Landry stole the vehicles. However, nothing in the record implicates Landry in the theft of the vehicles or in defendants' retention of the proceeds. In short, plaintiff's request could be construed as inviting Bashawaty to participate in insurance fraud. Accordingly, the trial court did not clearly err by finding that plaintiff had unclean hands and by denying plaintiff's claim for damages on this basis.

Lastly, we also reject plaintiff's related argument that the trial court committed an error of law because the court allegedly concluded that plaintiff owed defendant the money. This position is without support on the record. The trial court determined that plaintiff was not entitled to damages because of its bad faith and unclean hands; it never found that defendants were owed the money or that they could keep the funds as a "set-off." Plaintiff is not entitled to any relief on appeal.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello